INTRODUCTION

For both legal and policy reasons, this matter should not be resolved by the Commission at this time but should be considered as a part of a new rulemaking proceeding to consider the benefits of net metering to APS and all other regulated Arizona utilities.

CURRENT COMMISSION NET METERING POLICIES ARE ESTABLISHED BY RULE AND CANNOT BE MODIFIED BY ACTION IN A CASE INVOLVING ONLY A SINGLE REGULATED UTILITY

A. Framework and History of Net Metering Rule

Current ACC policies regarding net metering were established after extensive hearings in 2007 and 2008, which resulted in the Commission adopting the PURPA standard on net metering:

...electric energy generated by that electric consumer from an eligible on-site generating facility and delivered to the local distribution facilities may be used to offset electric energy
provided by the electric utility to the electric consumer during the
applicable billing period. (Decision 69877, August 28, 2007).

That decision included a discussion of comments from APS, UniSource
Energy and Arizona cooperatives that may sound familiar: "...customers
taking service under net metering rules do not pay the full cost of
transmission and distribution systems...Therefore, those net metering
customers are subsidized by other customers."

The Commission soundly rejected these complaints and adopted net
metering. This decision led to proposed Net Metering Rules (Decision
70194, March 20, 2008) that were later approved by the Attorney
General and promulgated by the Secretary of State.

The Commission's press release announcing approval of net metering
rules included these remarks from Commissioner Pierce:
I am happy to see these net metering rules move forward. Net
metering is a critical component of establishing a viable market f
or distributed generation in Arizona.... I enthusiastically support
their passage. (March 12, 2008)

The staff rulemaking report of Appendix C, attached to Decision 70567
(October 23, 2008) includes several important policy perspectives that
are still relevant today:

2. Brief Summary of Economic Impact
The public at large will benefit from Net Metering since it will
encourage more of the electricity produced in Arizona to be
generated from renewable resources and high-efficiency facilities.
(at 6)
5d. Probable cost and benefit to private persons and consumers
who are directly affected by the final rules
...most renewable resources rely on either no-cost resources
(such as the sun, wind and geothermal heat) or very low-cost
resources (eg biomass) which are available locally.... These
features contribute to the reliability of the energy supply that
Arizonans will depend upon to meet future energy needs. (at 12-
13).
The reasons these sections and this analysis is significant can be found in R14-2-2305, New or Additional Charges, which requires any proposed additional charges to net metering customers be filed with the Commission and "fully supported with cost of service studies and benefit/cost analyses. The Electric Utility shall have the burden of proof on any proposed charge." APS has utterly failed to meet this requirement. The development and expansion of the solar industry has depended in part on the existing Net Metering Rules and have created thousands of jobs, a substantial amount of tax revenue, and a decreased dependence on out of state coal, all benefits to Arizona and its residents.

B. Any changes to the Net Metering Rules should be in Generic Rulemaking Proceedings, not in a proceeding covering only one regulated utility

These net metering rules apply to all regulated electric utilities in Arizona and were to be followed by submission of tariffs to implement the rules for each utility, which was done beginning in 2009. Rulemaking is the preferred method of regulation by state agencies charged with authority over numerous entities. This is true of the Arizona ACC and has been articulated by our courts. In ACC et al v Palm Springs Utility Co, 24 Ariz App 124 at 128(Div 1, 1975), the Court held that as a general principle of administrative law, the promulgation of rules and regulations of general applicability is to be favored over the generation of policy in a piecemeal fashion through individual adjudicatory orders.

While there the Court approved an ACC order to a single utility in the absence of a rule, it seems clear that this principle requires amending an existing rule through generic rulemaking action, giving all parties an opportunity to participate. This concept would be violated by modifying the existing net metering rule for APS only, as requested in this case.

I support the Staff's recommendation of opening a generic docket to obtain stakeholder input on this matter. (Proposed Order at Para 52).

C. Several of the proposed "solutions" in this case violate the existing Net Metering Rule and other Commission procedures
The APS “Bill Credit Option” is not a proper option under the existing Net Metering Rule since it does not allow for an offsetting of electricity generated but forces solar customers into a “buy all/sell all” situation, very different from that set forth in PURPA and adopted by the Commission in its earlier orders cited above. Staff correctly dismisses this option (Proposed Order at Paras 36-37).

The APS “ETC-2 Plus NM Option” also violates the existing Net Metering Rule because it creates additional charges for these customers without the required showing and produces additional revenue for the utility outside a rate case.

Finally, APS attempts to have this Commission consider long-term UFI payments as part of this proceeding, rather than in the APS 2014 REST case where decisions regarding utility incentives for solar are considered on a year-by-year basis. This is also clearly inappropriate procedurally.

Staff Alternative #1 appears to violate the burden of proof requirements of the current Net Metering Rule, since no evidence has been presented by the utility to support such a proposal. Staff Alternative #2 is even further afield in lack of evidentiary support. Likewise, RUCO’s proposals violate the evidentiary requirements of the Rule. All of these proposals should at the least be subject to hearing and cross-examination of proponents before they can be relied upon as a basis for an important Commission order.

D. This case also represents an attempt at single-issue ratemaking outside of a rate case, prohibited by Arizona law

As Staff and other parties have more fully articulated, the financial aspects of this case should not be decided in this proceeding, but should be resolved in the next APS rate case.

CONCLUSION

Changes to this Commission’s properly adopted Net Metering Rule must be done in a generic proceeding where all parties affected can participate, present evidence and comments, and comply with the Arizona law concerning rulemaking, the preferred method of setting out policy by state agencies. Financial matters should be addressed in rate cases. I agree with staff that this matter should not be decided at this
time but should be referred to a generic proceeding to consider any and
all possible modifications to the net metering scenario now in place in
Arizona. Rate changes are proper subjects for rate cases. This
proceeding is not the place for either a single-company modification to
the Net Metering Rule or a change in its rates.

Respectfully submitted this 6th day of November, 2013.

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